BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4074 of 2025**
Date of Filing:		**05.08.2025**
Date of decision	:	**17.07.2026**

Roma Gulrajani **Address:** - 58, Sheringham Avenue, Southgate, London, N-14-4UG, United Kingdom	**Complainant**
Versus	
1. Real Town Properties Private Limited Office at: - 83rd Avenue, Sector-83, Village Sihi, Tehsil Manesar, District Gurgaon 2. Venetian LDF Projects LLP Office at: 205, 2nd Floor, Time Centre, Golf Course Road, Sector-54, Gurgaon	**Respondents**

CORAM:	
Shri Arun Kumar	**Chairman**

APPEARANCE:	
Sh. Tushar Gaur	Advocate for the complainant
Sh. Harshit Batra	Advocate for the respondents

ORDER

1. The present complaint dated 05.08.2025 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations

made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"83 Avenue" Sector – 83, Gurugram
2.	Project area	2.3625 Acres
3.	Nature of the project	Commercial colony
4.	DTCP license	12 of 2013 dated 13.03.2013 Valid up to 12.03.2027
5.	Name of Licensee	M/s Realtown Property Private Limited
6.	RERA Registered & validity status	**Registered** 04 of 2019 dated 16.01.2019 Valid up to 30.09.2020
7.	Earlier allotted Unit no.	R-17, 2nd Floor, (page no. 49 of complaint)
8.	Earlier allotted Unit area	1091 sq. ft. (super area) (page no. 49 of complaint)
9.	New unit no. as per addendum	F-105 814.14 sq. ft. (super area) 407.07 sq. ft. (carpet area)
10.	Allotment letter	13.09.2014 (page no. 25 of complaint)

11.	MOU	13.09.2014 (page no. 32 of complaint)
12.	Assured return	3. Assured Return 3.1 Till the notice for offer of possession is issued, the Developer shall pay to the Allottee an Assured Return at the rate of Rs. 59.35/- per sq. ft. of super area of premises per month. The allottee agrees to pay the balance premium as per the Payment Plan mentioned in Schedule- 1 of this MOU.
13.	Date of execution of buyer's agreement	18.09.2014 (page no. 46 of complaint)
14.	Addendum to BBA	12.10.2019 (page no. 75 of complaint)
15.	Possession clause	*38. The Developer/LLP will based on its present plans and estimates contemplates to offer possession of said unit to the Allottee (s) within 36 months of signing of this Agreement or within* ***36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.*** **[Emphasis Supplied]** (As per page 57 of complaint)
16.	Due date of possession	**18.09.2017**

		[calculated from the date of agreement]
17.	Total sale consideration	Rs.60,22,320/- (For unit no. R-17 at page no. 49 of complaint) Rs.49,06,008/- (For unit no. F-105 at page no. 76 of complaint)
18.	Amount paid	Rs. 50,60,747/- (as per offer of possession annexed at page 60 of reply)
19.	Occupation Certificate	**18.09.2024** [Ground Floor to 10th Floor] (As per copy of OC at page 54 of reply) **and** **25.07.2025** [For 11th and 12th Floor] (As per copy of OC uploaded at TCP Haryana Official website)
20.	Offer of possession [for payment of O/s amount of Rs.14,71,603/-]	14.10.2024 (As per page no. 57-60 of reply)
21.	Reminders for payment	19.11.2024, 12.12.2024, 02.01.2025
22.	Cancellation of unit	14.04.2025 (page no. 68 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

I. That on 9th September 2014 the complainant has booked a unit no. R-17 on second floor, measuring about 1091.00 sq. ft. in the commercial project launched by the respondents after paying an amount of Rs. 35,76,635/- dated 08.09.2014 and also paid Rs. 180/-in cash and Rs. 4,00,000/- through cheque dated 08.09.2014 against the total sale consideration of Rs. 60,22,320/-. The complainant also paid Rs. 14,83,932/- against another unit number SA-14-33 in the same commercial project of opposite party number 2 i.e "83 Avenue" Sector 83, Village Sihi, District-Gurgaon, Haryana.

II. That thereafter on 13th September 2014 the respondent no. 2 i.e. Venetian LDF Projects LLP issued allotment letter and receipts of amount deposited in the name of complainant and also executed a memorandum of understanding on the aforementioned date.

III. That further in respect of the above said unit executed a space buyer's agreement on 18.09.2014.

IV. That further in respect of the above said unit and as per demand of the respondents, the complainant had paid an amount of Rs. 3,84,621/- vide receipt ID. 000740 dated 31.03.2015.

V. Thereafter, the complainant had paid total Rs. 58,45,368/- against the total sale consideration upto the year 2015 and the respondents assured to handover the possession of the above said unit up to the end of year 2017 but the respondent no. 2 failed to do so.

VI. That the complainant several times asked the officials of the respondent no. 2 about the possession and registration of deed in respect of the above said unit however they replied by saying that the complainant shall be notified as soon as the project gets completed but they failed to handover the possession of the above mentioned unit to the complainant till 2018.

VII. That in the year 2019 the respondent no. 2 informed that they are not in a position to execute the space buyer's agreement as agreed for unit no. R17 and SA-14-33 and alternatively offered to provide another unit no. F-105 on first floor of the commercial unit in "83 Avenue" the commercial project developed over land situated in sector 83, revenue estate of village Sihi, Tehsil-Manesar, District-Gurgaon, Haryana measuring about 814.14 sq. ft. against the total sale consideration of Rs. 49,06,008/-.

VIII. That since, at that time the complainant residing at Southgate - London as such in India she has left with no option except to accept the proposal made by the respondent no. 2 as such allotment letter for commercial unit number F-105 on first floor of the commercial unit in "83 Avenue" the commercial project developed over land situated in sector 83, revenue estate of village Sihi, Tehsil-Manesar, District- Gurgaon, Haryana vide letter dated 11.10.2019 was issued which was accepted by the complainant and accordingly an addendum to buyers agreement in respect of exchange of unit number R-17 to F-105 has been executed on 12th October 2019 by and between the and respondent no. 2 and complainant.

IX. That after execution of the allotment letter, addendum to buyers agreement in respect of a commercial unit no. F-105 on first floor in "83 Avenue" situated in sector 83, revenue estate of village Sihi, Tehsil-Manesar, District-Gurgaon, Haryana. The respondents failed to pay assured return as agreed in ARTICLE 3 of the original memorandum of understanding dated 13.09.2014 i.e. Rs. 59.35 per sq. ft. from the date of memorandum of understanding till the date of offer of possession and has also failed to handover the possession of the unit and to execute the sale deed in respect of the unit no. F-105 on first floor in "83 Avenue" situated in sector 83, revenue estate of village Sihi, Tehsil-Manesar, District-Gurgaon, Haryana.

X. That thereafter the complainant several times approached to the respondent no. 2 for handing over the possession of the unit and execution of the sale deed for unit number F-105, first floor in "83rd Avenue" situated in sector 83, village Sihi, District-Gurgaon, Haryana, however the respondent no. 2 has failed to deliver the possession of the unit within stipulated time as promised at the time of booking of the said unit on false pretext that they have not obtained occupancy certificate from the concerned authorities. However the complainant has made the requisite payment for the unit within time.

XI. That on 14th October 2024 the respondent no. 2 has issued a demand letter and notice of possession of unit no. F-105 on first floor in "83 Avenue" situated in sector 83, revenue estate of village Sihi, Tehsil-Manesar, District-Gurgaon, Haryana. Thereby demanded rupees 14,71,603/- as outstanding amount as per Annexure-A of the said letter.

XII. That the respondent no. 2 after issuance of the aforementioned demand letter and notice of possession dated 14th October 2024, sent emails to the complainant to clear the dues and subsequently getting the registration of the above said unit F-105 on first floor in "83 Avenue" situated in sector 83, revenue estate of village Sihi, Tehsil-Manesar, District-Gurgaon, Haryana.

XIII. That the respondent no. 2 through its demand letter vide reminder e-mail dated 11.03.2025 and thereafter again on 10.04.2025 called upon the complainant to visit Gurgaon, Haryana, India to clear the outstanding payment and registration charges in lieu of Unit No. F-105 on first floor in "83 Avenue" situated in sector 83, revenue estate of village Sihi, Tehsil-Manesar, District-Gurgaon, Haryana amounting to Rs. 17,49,919/-.

XIV. That the complainant on assurance given by respondent no. 2 booked her flights and arrived at New Delhi from London, United Kingdom on 21.04.2025.

XV. That the complainant on 22.04.2025 visited the office of the respondent no. 2 to clear her dues and execute the sale deed modalities at the Sub - Registrar, Tehsil-Manesar, District-Gurgaon. However the respondent no. 2 again on false pretext of being unable to acquire the occupancy certificate from the concerned authority seek more time for the registration of Unit No. F-105 on first floor in "83 Avenue" situated in sector 83, revenue estate of village Sihi, Tehsil-Manesar, District-Gurgaon, Haryana and requested the complainant to extend her stay by a week. The complainant was left with no other option but to extend her stay waiting for the registration to happen.

XVI. That on 29.04.2025 the respondent no. 2 continued to seek more time and failed to deliver the possession of the unit no. F-105 on first floor in "83 Avenue" situated in sector 83, revénue estate of village Sihi, Tehsil-Manesar, District-Gurgaon, Haryana, and execute the sale deed in respect of the said unit no. F-105 and further requested the complainant to extend her stay by another 10 days on the false pretext of being unable to acquire the occupancy certificate from the concerned authorities.

XVII. That in lieu to the recent developments, feeling anxious, mentally stressed and harassed on 02.05.2025 the complainant decided to travel to Goa and thereafter to Lucknow assuming that in the meantime the respondent no. 2 will be able to acquire the pending occupancy certificate from the concerning authority however even after the expiry of 10 days the respondent no. 2 was unable to fulfill his towering claim and started to dilly dally with the complainant.

XVIII. That on 08.05.2025 upon reaching Lucknow, Uttar Pradesh and feeling mentally stressed, in agony, pain and harassed by respondent no. 2 the complainant continuously thinking about, over her, 11 year old investment going bad even after having paid her part of the liability and yet, unable to take possession and get the said unit no. F-105 on first floor in "83 Avenue" situated in sector 83, revenue estate of village Sihi, Tehsil-Manesar, District-Gurgaon, Haryana, registered in her name before the registrar by way of executing a sale deed, the complainant fell on the floor, causing severe injury in her spine and fractured her 12th DORSAL VERTEBRA and accordingly was admitted in Charak Hospital and Research Centre, Dubagga, Lucknow from 08.05.2025 to 23.05.2025 for a period of 15 days and is still in the process of healing and recovery at the time of filing of this complete before the Hon'ble Authority.

XIX. That during the complainant's stay at Lucknow complainant had to go through immense mental agony and pain besides undergoing her medical treatment, bearing its expenses, away from friends and family, confined in a hospital room. It is essential to mention here that during the complainant's stay at Charak Hospital, Lucknow, Uttar Pradesh her husband as such had to stay in a hotel and together both husband and wife spent a significant amount in the head of fooding, lodging, transportation, cancellation of her return international tickets to London, U.K, plus other miscellaneous expenses etc. amounting to Rs. 5,00,000/-.

C. **Relief sought by the complainant:**

4. The complainant has sought following relief(s)

   I. Direct the respondents to handover the possession and execute registered sale deed in respect of unit F-105 on first floor in "83 Avenue" situated in Sector-83, revenue estate of village Sihi, Tehsil Manesar, District-Gurgaon, Haryana measuring super area 814.14 sq. ft. including all the amenities as promised in the space buyer's agreement.

   II. Direct the respondents to pay interest @ 24% p.a. for the delay which has to be calculated as and when the sixty months was completed and thereafter the grace period was exhausted. Further the calculation shall be done on the total amount paid at the above mentioned interest rate till the date of order pendent lite.

   III. To pay a sum of Rs. 10,00,000/- as a cost of litigation to the complainant.

5. On the date of hearing, the authority explained to the respondents /promoter on the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. **Reply by the respondents**

6. The respondents contested the complaint on the following grounds. The submission made therein, in brief is as under: -

   I. That the complainant being interested in the real estate development of respondent no. 2 known under the name and style of "83 Avenue" located at Sector 83, Gurugram, Haryana (the "Project") booked a unit in the said project after conducting their due diligence. It is submitted that prior to approaching respondent no. 2, they conducted extensive and independent inquiries regarding the project and it was only after that he was fully satisfied with regard to all aspects of the project that they took an independent and informed decision to purchase the unit.

II. That consequently, a commercial unit bearing no. R-17 tentatively admeasuring super area of 1091 sq. ft. (the "Old Unit") was allotted to the complainant vide allotment letter dated 13.09.2014.

III. Thereafter, a memorandum of undertaking dated 13.09.2014 was executed between the parties.

IV. That thereafter, the space buyer's agreement dated 18.09.2014 was executed between the parties. That the relationship between the parties is contractual in nature and is governed by the agreement, the contents of which were willingly, voluntarily and categorically accepted between the parties. The rights and obligations of the parties flow directly from the agreement. At the outset, it must be noted that the complainant willingly and voluntarily entered into all and every agreement after reading and understanding the contents thereof.

V. That at this stage, it is pertinent to highlight clause 24 of the agreement dated 18.09.2014 which establishes the fact that the agreement dated 12.04.2016 is the entire agreement and supersedes all the previous agreements and understandings.

VI. That the parties had the intention of establishing their rights and obligations as per the new contract – the agreement dated 18.09.2014 which deals with all the aspects of contractual relationship between the parties in toto. It categorically superseded the MOU.

VII. That the parties mutually agreed to transfer the amount paid for the old unit to the new unit bearing no. F-105 admeasuring 814.14 sq. ft. and executed an addendum to the space buyer's agreement dated 12.10.2019.

VIII. That as per clause 36 clause of the agreement, respondent no. 2 proposed to hand over the possession of the unit within a period of 36 months from the date of receipt of all approvals or signing of the agreement with a grace period of 3 months.

IX. That a period of 520 days was consumed on account of circumstances beyond the power and control of respondent no. 2, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure as stated above. Thus, respondent no. 2 has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above. Therefore, the same is not to be taken into reckoning while computing the due date as has been provided in the agreement.

X. That, additionally even before normalcy could resume, the world was hit by the COVID-19 pandemic. The COVID-19 pandemic resulted in serious challenges to the project with no available labourers, contractors, etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of the COVID-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days, which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI, further extended the lockdown from time to time. Various State Governments, including the Government of Haryana, have also enforced various strict measures to prevent the pandemic, including imposing curfew, lockdown, stopping all commercial activities, and stopping all construction activities. Despite the above-stated obstructions, the nation was yet again hit by the second wave of the COVID-19 pandemic, and again, all the activities in the real estate sector were forced to stop. It is pertinent to mention that, considering the widespread spread of Covid-19, firstly night curfew was imposed followed by a weekend curfew and then a complete curfew. That during the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity, including the construction activity, was banned in the State. Therefore, it is safely concluded that the said delay of 520 days in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. From the facts indicated above and documents appended, it is comprehensively established that a period of 520 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of the aforesaid orders by the statutory authorities. It is submitted that all the circumstances stated hereinabove come within the meaning of force majeure in terms of the agreement.

XI. That despite the default caused, the answering respondent no. 2 applied for an occupation certificate in respect of the said unit on 14.10.2023 and the same was thereafter issued on 18.09.2024. That once an application for the grant of an occupation certificate is submitted for approval in the office of the statutory authority concerned respondent no. 2 ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the statutory authority concerned over which respondent no. 2 cannot exercise any influence.

XII. That even after the defaults of the complainant, respondent no. 1 completed the construction of the unit and offered possession of the unit to the complainant on 14.10.2024 and earnestly requested the complainant to take possession of the unit after remittance of the balance sales consideration of the unit. The respondent no. 1 had duly informed the complainant that the occupation certificate was received on 18.09.2024.

XIII. That the complainant was duly offered the possession of the unit on 14.10.2024 and the complainant was obligated to make payment of the outstanding dues and take the possession of the unit. That the timely payment of the sales consideration of the unit was the essence of the agreement executed between the parties as per clause 24 of the agreement. In case of default by the complainant, the complainant is bound to make the payment of interest at the same rate of interest as per rule 2(za) of the HRERA Rules, 2017.

XIV. That out of the total sales consideration of Rs.65,32,350/- the complainant had only made payment of Rs. 50,60,747/-.

XV. That as per clause 6 of the agreement, the complainant agreed to the tentative nature of the super area of the unit and had also agreed to make the payments of such additional charges being charged due to an increase in the super area. At this instance, it is submitted that there is no increase in the super area. Hence, the complainant is liable to make payment on the basis of the super area mentioned in the offer of possession.

XVI. That the complainant has failed to make the payment of the outstanding dues raised by the respondents vide offer of possession letter which the complainant was under the obligation to pay as per the terms and conditions of the agreement. That the bifurcation of the demand raised was provided to the complainant, in annexure A annexed with the offer of possession letter.

XVII. That the charges demanded by the respondents are in accordance with the terms and conditions of the agreement mutually entered into between the parties and the same have also been upheld by the ld. authority in a catena of cases.

XVIII. Hence, it is evident that all the charges demanded from the complainant at the time of are valid and the complainant is liable to clear the outstanding dues raised by the respondents vide final demand letter and notice of possession dated 14.10.2024.

XIX. That the complainant has till date made payment of Rs. 50,60,747/- out of the total sales consideration of Rs. 64,32,350/- of the unit.

XX. That after the offer of possession dated 14.10.2014 various reminders were raised as per the agreed payment plan; however, the complainant had continuously delayed in making the due payments.

XXI. That since the complainant failed to make a payment towards the outstanding dues, the respondents herein issued reminder letters for payment and the same was duly sent to the complainant, but to no avail. That thereafter the respondents herein sent a reminder letters dated 25.11.2024, 12.12.2024 and 02.01.2025 to the complainant requesting him to make payment of outstanding dues. Subsequently, when no response was received from the complainant, the respondents sent a final notice dated 14.04.2025 to the complainant however, still no response was received from the complainant.

XXII. That despite the offer of possession, the complainant was repeatedly called upon to comply with their contractual obligations the complainant was served possession reminders dated 19.12.2024, 12.12.2024 and 02.01.2025. That thereafter vide the letter dated 14.04.2025 the complainant was intimated that the unit has been terminated and the respondents also wrote to the complainant to collect their refund cheque from the office of the respondents.

XXIII. That the complainant, despite having full knowledge of the consequences of their continued default, wilfully and deliberately failed to make the due payments within the stipulated time. Consequently, the allotment of the unit stood terminated as per the express understanding of the terms of the agreement as well as the letter dated 19.12.2018.

XXIV. That in the present case, despite the offer of possession and repeated reminders, granting a clear opportunity to cure the default, the allottee failed to discharge the contractual obligations within the stipulated period. That such failure constitutes a fundamental breach of the expressed terms and conditions of the buyer's agreement and the RERA Act. Upon the occurrence of this default, the allotment stood terminated by operation of the contract itself without the necessity of any further act, discretion or adjudication by the respondents, leaving no subsisting contractual right in favour of the complainant.

XXV. That on 22.04.2025 issued demand drafts amounting to Rs. 14,71,603/- and Rs. 2,78,316/- and in lieu of the same the respondents had issued a no dues certificate dated 22.04.2025 to the complainant. The no dues certificate dated 22.04.2025 categorically noted that the no dues certificate was subject to the clearance of demand draft issues against the final demand raised. The demand drafts dated 22.04.2025 amounting to Rs. 14,71,603/- got bounced on 23.04.2025. Thereafter, the respondents returned the amount of Rs. 2,78,316 to the complainant.

XXVI. That the complainant has prayed for the relief of "Assured Return", inter alia, on the basis of a Memorandum of Understanding. The MOU was replaced by the agreement and thus all the rights and obligations under the MOU stand discharged.

XXVII. The complainant has failed to note that execution of the agreement has superseded the MOU, as is also evident from clause 83 of the agreement. In any circumstance whatsoever, the Act does not speak of the recognition of multiple agreements for the sale of property.

XXVIII. That without prejudice to the submissions of the respondent no. 2 that there is no obligation of payment of assured return, it is submitted that the relief of assured return is beyond the jurisdiction of the Ld. Authority has been dressed in.

XXIX. That it is germane to note that the non-payment of assured return, as alleged by the complainant in his complaint is bad in law. The payment of assured return is not maintainable before the Ld. Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 [BUDS Act], wherein, under section 7 thereof, the Legislature, in its utmost wisdom, has noted that the 'competent authority' shall have the jurisdiction to deal with cases pertaining to the Act.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below: -

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District

for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

I. Direct the respondents to handover the possession and execute registered sale deed in respect of unit F-105 on first floor in "83 Avenue" situated in Sector-83, revenue estate of village Sihi, Tehsil Manesar, District-Gurgaon, Haryana measuring super area 814.14 sq. ft. including all the amenities as promised in the space buyer's agreement.

II. Direct the respondent to pay interest @ 24% p.a. for the delay which has to be calculated as and when the sixty months was completed and thereafter the grace period was exhausted. Further the calculation shall be done on the total amount paid at the above mentioned interest rate till the date of order pendent lite.

11. The complainant filed the above mentioned complaints seeking delay possession charges along with possession of the unit. The unit no. R-17 situated on 2nd Floor admeasuring 1091 sq. ft. (tentatively) was allotted to the complainant vide allotment letter dated 13.09.2014. The Memorandum of Understanding (MOU) regarding the said unit was executed on the same date. Thereafter on 18.09.2014 the builder buyer agreement was executed between the parties. Further on 12.10.2019, an addendum to builder buyer

agreement was executed and a unit no. R-17 was transferred to F-105 admeasuring 814.14 sq. ft.

12. As per the possession clause 38 of the buyer's agreement the possession of the unit was to be handed over within 36 months of signing of this Agreement or within 36 months from the date of start of construction of said building, whichever is later with a grace period of 3 months, subject to force majeure. The due date of possession is calculated from the date of agreement which comes out to be 18.09.2017. The total sale consideration of the unit was Rs. 60,22,320/- which was later reduced to Rs. 49,06,008/- after shifting of unit and the complainant has paid an amount of Rs. 50,60,747/-.

13. The complainant contends that he is seeking delay possession charges along with possession of the unit and further states that the respondents have arbitrarily cancelled the allotment of the unit on 14.04.2025 on the ground of non-payment of outstanding dues. The complainant further states that the said charges are invalid.

14. The respondents on the other hand, submits that the respondents have completed the project and has received the occupation certificate on 18.09.2024 and subsequently offered the possession of the unit on 14.10.2024. Moreover, the respondents have raised the demand for outstanding payments, which were as per the buyer's agreement dated 18.09.2014, terms & conditions of which were read and agreed by complainant. Due to non-payment of such demands, the respondents send various reminders to the complainant on 19.11.2024, 12.12.2024 and 02.01.2025. However, the complainant failed to honour its obligation to pay the amount on time. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit despite issuance of reminders, the

complainant has failed to clear the outstanding dues. Therefore, the respondents cancelled the unit on 14.04.2025. Hence the present complaint is liable to be dismissed.

15. Now the question before the authority is whether the cancellation issued vide letter dated 14.04.2025 is valid or not.

16. Upon consideration of the documents placed on record and the submissions made by both the parties, the Authority observed that the total sale consideration of the unit in question was Rs. 49,06,008/- out of which the complainant has paid a sum of Rs. 50,60,747/- to the respondents. The respondents vide offer of possession raised a demand of Rs. 14,71,603/-. The complainant has pleaded that the said charges are invalid. In this regard the authority observes that clause 2 is relevant and reproduced hereunder for ready reference:

> *2. The Sale Price means a sum of Rs. 60,22,320/- payable for the sale of the said unit and as mentioned in clause 3 which include the following:*
>
> *a. ....*
>
> *b. ....*
>
> *c. ....*
>
> *Sale Price does not include the following:*
>
> *a. All taxes, VAT and cesses payable as per the terms of this Agreement, including but not limited to Service Tax.*
>
> *b. Increase in EDC and IDC by the State Government after the date of grant of license, whether retrospectively or prospectively.*
>
> *c. All other types of securities including IFMS, Sinking Fund, Maintenance Charges and property taxes.*
>
> *d. Increase in price due to increase in super area of the said unit, stamp duty, registration and any incidental charges and any other charges payable as stated in this Agreement.*
>
> *e. Electric connection charges, meter charges.. The amount payable on this account will depend on the estimates Approved by DHBVN for service connection/substation equipment's, cost of area and security deposit etc.*
>
> *f. Power Backup charges, Air conditioning cost.*

g. *Interiors Capital cost in case of Managed Homes, Serviced Apartments and Miniples.*
h. *Cost of utensils, crockery, cutlery and other equipment's required for operation of Serviced Apartments as per the agreement executed/to be executed with operator.*
i. *Air conditioning cost.*

17. As per clause 2 of the buyer's agreement it was the contractual obligation and responsibility of the complainant to pay the applicable other charges including but not limited to External Electrification Charges (EEC), Electrification Maintenance Charges (EMC), Power Backup charges, Fire Fighting Charges (FFC), air conditioning charges and all other ancillary charges as may be applicable in terms of agreement.

18. It is a matter of fact that the complainant has paid Rs. 50,60,747/-. Therefore, the Authority observes that the demand raised by the respondents vide letter dated 14.10.2024 is valid. The complainant cannot evade or escape its obligation to make payment.

19. The Authority has considered the rival submissions and the material available on record. It is not in dispute that subsequent to the cancellation of the unit, the complainant issued a demand draft dated 22.04.2025 towards the outstanding dues. The respondents have contended that the said demand draft could not be realised on account of discrepancy in the name of the payee and has alleged that the same stood dishonoured.

20. However, the complainant through its written submissions has specifically denied the said contention and has placed on record an email communication from the concerned bank which clarifies that the demand draft was never presented for clearing by the respondents. The Authority finds merit in the contention of the complainant to the extent that a Demand Draft, being a secure banking instrument does not get "bounced"

in the manner alleged and in the present case, there is nothing on record to establish that the instrument was ever presented for encashment.

21. In view of the above, the Authority is of the considered opinion that the complainant has demonstrated its readiness and willingness to discharge its contractual obligations of making the payment. At the same time, as already observed the complainant is liable to make payment of the outstanding dues in terms of the buyer's agreement. The Authority further observes that the amount already paid by the complainant continues to remain with the respondents and the complainant cannot be deprived of the benefits thereof. The Authority further notes that the respondents have filed an application dated 29.04.2025 contending that third party rights have been created in respect of the subject unit; however, such contention cannot be permitted to defeat the legitimate rights of the complainant, particularly when the complainant has already made substantial payments and has demonstrated readiness and willingness to fulfill the remaining contractual obligations.

22. Accordingly, in the interest of justice, the respondents are directed to accept the due payment from the complainant subject to reconciliation of accounts and upon receipt of the same, proceed to hand over possession of the subject unit to the complainant without any further delay, in accordance with the terms of the agreement.

23. Moreover, the respondents are directed to offer an alternative unit at similar location to the complainant at the same rate as per the agreed terms of the subject agreement dated 18.09.2024 and handover its physical possession.

24. **Admissibility of delay possession charges at prescribed rate of interest**: Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter,

interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> *(i) Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*
> *(ii) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> (iii) *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

25. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

26. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 17.07.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

27. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *(iv) "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *(v) Explanation. —For the purpose of this clause—*
> *(vi) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(vii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till*

> *the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondents /promoter which is the same as is being granted to them in case of delayed possession charges.

29. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondents are in contravention of the provisions of the Act. By virtue of clause 38 of the agreement executed between the parties on 18.09.2014, the possession of the subject unit was to be delivered within a period of 36 months from the signing of this agreement or within 36 months from the date of start of construction of said building whichever is later with a grace period of 3 months, subject to force majeure. The date of start of construction is not on record therefore, the due date is calculated from the date of execution of agreement dated 18.09.2014 which comes out to be 18.09.2017. The occupation certificate for the project was received on 18.09.2024 and possession was offered on 14.10.2024. The respondents have failed to handover possession of the subject unit till the due date of possession. The authority is of the considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement.

30. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 18.09.2024. The respondents offered the

possession of the unit in question to the complainant only on 14.10.2024. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 18.09.2017 till the date of offer of possession (14.10.2024) plus two months i.e., 14.12.2024.

31. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents are established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 18.09.2017 till the offer of possession (14.10.2024) plus two months 14.12.2024 at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

III. **To pay a sum of Rs. 10,00,000/- as a cost of litigation to the complainant.**

32. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to

claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority

i. The respondents are directed to accept the due payment from the complainant subject to reconciliation of accounts and upon receipt of the same, proceed to hand over possession of the unit to the complainant without any further delay, in accordance with the terms of the agreement. The complainant is also directed to pay the outstanding amount as may be determined upon such reconciliation.

ii. The respondents are directed to handover the possession of an alternative unit of same size, similar location and at the same rate and specifications at which the unit was earlier purchased as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 within two months form the date of this order and thereafter, the complainant is obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.

iii. The respondents are directed to pay the interest to the complainant against the paid-up amount for every month of delay from due date of possession i.e., 18.09.2017 till the offer of possession (14.10.2024) plus two months 14.12.2024 at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

iv. The respondents shall not charge anything from the complainant which is not the part of the builder buyer agreement.

v. The complainant is also directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.

33. Complaint stands disposed of.

34. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.07.2026